Supreme Court of the United States

OCTOBER TERM—1939

No. 342

AMALGAMATED UTILITY WORKERS, affiliated with UTILITY WORKERS ORGANIZING COMMITTEE, CONGRESS OF INDUSTRIAL ORGANIZATIONS

Petitioner

against

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies, *et al.*

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS

WILLIAM L. RANSOM
P. M. BERKSON
Counsel for respondents

WHITMAN, RANSOM, COULSON & GOETZ
Solicitors for respondents
No. 40 Wall Street
New York City

INDEX

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
STATUTE	2
QUESTION PRESENTED	2
STATEMENT	4–12
History of the prior proceedings	4–5
The review and enforcement proceedings	6
Permission to the Amalgamated to be heard orally and file a brief	6–7
The decree for enforcement at the instance of the Board	7
Nature of the matters on which the petition now asks adjudication	7–8
Form and objectives of the Amalgamated's motion	8–10
Variances between the Board's determination and Order and the relief now sought	10
The Board has not made findings for a decision as to the matters now alleged	10–11
Answer of the respondents	11
Amalgamated has no standing to challenge the respondents' compliance with Section 9(a) of the Act, as to dealing with the majority Union	11–12
Has the petitioner submitted the same matters to the Board?	12
ARGUMENT	13–50
I. THE NATIONAL LABOR RELATIONS ACT DOES NOT GIVE TO A CONTENDING LABOR ORGANIZATION EQUAL OR GREATER POWERS THAN THOSE OF THE BOARD, IN THE INITIATING AND CONTROL OF ENFORCEMENT PROCEDURES	13–29
Unusual features of this motion	13
The respondents' contention	14
Theory of the Amalgamated's claim (its brief quoted)	14–15
Petitioner answered by its own previous contentions in this Court	16
The Act declares public policy and fortifies public rights	16–17
The grounds on which the Act has been upheld are endangered by the petitioner's claims	17–18
Remedies and procedures of the Act are inter-dependent	18
The initiative and control of procedures are vested in the Board at every stage	19–20
The Act expressly makes its remedies and procedures exclusive	20
The intent of the Congress was plainly stated (Reports quoted)	21–23

PAGE

Procedure analogous to that under Federal Trade Commission Act 23-24

Petitioner's argument as to other statutes 24-25

National Labor Relations Act unlike Interstate Commerce Act 25-27

Incidental private benefits do not confer independent standing to sue 27-28

Uniformity of rulings in the various Circuits against contentions such as those of the petitioner 28-29

II. To uphold the claim of a contending labor organization to equal or superior proctorship of proceedings to enforce the Board's Orders would subvert the Act and its administration 29-36

Purposes and present status of the Act 29-30

Remedies and procedures claimed by labor organizations under the Act should not be extended before those clearly specified 30

Proctorship over enforcement procedures should not be given to private and contending organizations 30-31

Integrity of the legislative process should be preserved..... 31

Investigation by the Board should in any event precede contempt proceedings 32

Rulings to that effect in Federal Trade Commission cases.. 32-33

The Board's "response" to the Amalgamated motion cannot help the petitioner's lack of standing 34-35

The Board's procedures for prior investigation 35-36

III. Amalgamated's filing of a charge with the Board and its subsequent brief and oral argument by permission of the Court in the enforcement proceedings begun by the Board do not give it standing to institute contempt proceedings 36-38

IV. The Amalgamated cannot claim standing to prosecute this contempt proceeding on the theory that it is now a "person aggrieved" within the meaning of Section 10(f) of the Act 38-39

V. The comprehensive and specific statutory plan for enforcement by the Board precludes the authority of anyone else to initiate proceedings and precludes the availability of other modes of enforcement 39-43

The virtually admitted absence of statutory authority for its claim of standing is here fatal 39

The sound rule of the exclusiveness of statutory remedies.. 40

Analogies from rulings under other statutes 40-41

The Act here is not silent as to methods or the only authorized movant 42

Expressed intent of the Congress that contempt proceedings should be brought by the Board (quoted) 42

The decision in *American Federation of Labor* v. *N L R B*, decided January 2, 1940 43

PAGE

VI. THE BOARD'S ORDER AND THE ENFORCEMENT DECREE GRANTED AT THE INSTANCE OF THE BOARD DO NOT CREATE PRIVATE RIGHTS AND REMEDIES IN DEROGATION OF THE STATUTORY PLAN OF ENFORCEMENT 43–50

Judicial affirmance of the Board's directions could create no rights or remedies in derogation of the Act and not specifically authorized by the Act 43

Both the Board and the Court are limited by the Act..... 43–44

The Amalgamated makes no sufficient showing as a movant in contempt proceedings 45–46

The Amalgamated's unfounded argument from "practicality" 46–47

Had the Board exhausted its enforcement authority by filing the Transcript? 47

The *Ford Motor* case (305 U. S. 364) distinguished 47–48

In conclusion 49–50

VII. THE DECISION AND ORDER BELOW WERE CORRECT AND PLAINLY IN ACCORD WITH THE WORDING AND THE DECLARED INTENT OF THE ACT AND WITH THE SOUND FUNCTIONING OF THE PROCEDURES SET UP IN THE FIELD OF LABOR RELATIONS, AND SHOULD BE AFFIRMED 50

APPENDIX 51–56

Pertinent parts of the National Labor Relations Act..... 51–53

The Board's Order as modified by this Court 53–56

Table of Cases Cited

	PAGE
Aguilines, Inc. v. National Labor Relations Board, 87 Fed. (2nd) 146	29
Amalgamated Utility Workers v. Consolidated Edison Company, 106 Fed. (2nd) 991	1
American Federation of Labor v. National Labor Relations Board, — U. S. —, decided January 2, 1940	23, 30, 43, 44, 47, 50
Ashwander v. Valley Authority, 297 U. S. 288	46
Blankenship v. Kurfman, 96 Fed. (2nd) 450	21, 23, 29, 42
Consolidated Edison Company v. National Labor Relations Board, 305 U. S. 197, 95 Fed. (2nd) 390	1, 3, 4, 5, 6, 7, 8, 9, 11, 16, 18, 54, 55
Federal Trade Commission v. Balme, 23 Fed. (2nd) 615	32
Federal Trade Commission v. Baltimore Paint & Color Works, Inc., 41 Fed. (2nd) 474	32
Federal Trade Commission v. Eastman Company, 274 U. S. 619	44
Federal Trade Commission v. Klesner, 280 U. S. 19	21, 24, 25, 26, 28, 37
Federal Trade Commission v. Milling Company, 288 U. S. 212	32
Ford Motor Company v. Labor Board, 305 U. S. 364	37, 47, 48
Fox v. Capital Company, 96 Fed. (2nd) 684	34
Gompers v. Bucks Stove & Range Co., 221 U. S. 418	38, 48
Great Northern Ry. Co. v. Brosseau, 286 Fed. 414	33
Judelshon v. Black, 64 Fed. (2nd) 116	46
Matter of Williams Manufacturing Company, VI N. L. R. B. 135	11
McCabe v. Atchison, Topeka & Santa Fe Railway Co., 235 U. S. 151	45
McCrone v. United States, 307 U. S. 61	14, 27
Minnesota v. Northern Securities Co., 194 U. S. 48	40, 42
Mooresville Cotton Mills and Local 1221, U. T. W. A., II N. L. R. B. 952	11
National Labor Relations Board v. Bell Oil and Gas Company, 98 Fed. (2nd) 405; rehearing denied 99 Fed. (2nd) 56	13
National Labor Relations Board v. Carlisle Lumber Company, 5 L. R. R. 440	13
National Labor Relations Board v. Carlisle Lumber Company, 99 Fed. (2nd) 533	29
National Labor Relations Board v. Colten, et al., 105 Fed. (2nd) 179	29, 42

PAGE

National Labor Relations Board v. *Eavenson and Levering Company*, 4 L. R. R. 973 13

National Labor Relations Board v. *Fainblatt*, 306 U. S. 601 18

National Labor Relations Board v. *Hearst*, 102 Fed. (2nd) 658 29

National Labor Relations Board v. *Hopwood Retinning Company*, 104 Fed. (2nd) 302 ..... 13, 38, 49

National Labor Relations Board v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1 ..... 16, 17

National Labor Relations Board v. *National Motor Bearing Company*, 105 Fed. (2nd) 652 37

National Labor Relations Board v. *Pacific Greyhound Lines*, 106 Fed. (2nd) 867 13

National Labor Relations Board v. *Waterman Steamship Corporation*, U. S. ; 84 L. Ed. (Adv. Ops.) 132 38

Paine Lumber Co. v. *Neal*, 244 U. S. 459 ..... 40, 42

Pennsylvania Railroad Company v. *Puritan Coal Mining Company*, 237 U. S. 121 26

Rothschild & Co. v. *Marshall*, 44 Fed. (2nd) 546 44

Secor v. *Singleton*, 35 Fed. 376 45

Sprunt and Son v. *United States*, 281 U. S. 249 ..... 27, 28, 45

Texas & N. O. R. Company v. *Brotherhood*, 281 U. S. 548 40

Tyler v. *Judges of Court of Registration*, 179 U. S. 405 45

Virginia Railway Co. v. *System Federation*, 300 U. S. 515 40

Western Pacific California Railroad Company v. *Southern Pacific Company*, 284 U. S. 47 46

Table of Statutes Cited

CLAYTON ACT
(Tit. 15 U. S. Code, Section 26) 40
Section 16 40

FEDERAL TRADE COMMISSION ACT 21, 23, 24, 44
Section 5 ..... 25, 32, 37, 44

INTERSTATE COMMERCE ACT
(36 Stat. 1167, Tit. 49 U. S. Code, 40 U. S. C. A.) .. 18, 21, 24, 25, 26, 27, 28, 42
Section 9 ..... 21, 26
Section 13 ..... 21, 26
Section 13(1) 26
Section 16 ..... 21, 26
Section 16(2) 26, 41, 42
Section 16(4) 26, 41
Section 16(12) 26, 41, 42
Section 22 26

JUDICIAL CODE OF THE UNITED STATES
Section 240(a), as amended by the Act of February 13, 1925 (c. 229, Sec. 1; 43 Stat. 938) 2

PAGE

NATIONAL LABOR RELATIONS ACT
(Act of July 5, 1935; c. 372, 49 Stat. 449) ..2, 4, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 37, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51
Section 1 17
Section 5 36
Section 8 ..... 2, 18, 43
Subdivision (1) 5
Subdivision (2) 5
Subdivision (3) 5
Subdivision (5) 12, 19
Section 9 19
Section 9(a) 11, 12, 31
Section 10 ..... 2, 20, 36, 37
Subdivisions (b) to (i) 20
Section 10(a) 2, 18, 20, 22, 34, 38, 48, 51
Section 10(b) 4, 5, 18, 19, 34, 37
Section 10(c) 19, 48
Section 10(d) 48
Section 10(e) 2, 6, 7, 19, 36, 38, 51
Section 10(f) 2, 6, 19, 38, 39, 52
Section 11 18

PACKERS AND STOCKYARDS ACT
(Tit. 7 U. S. Code, 42 Stat. 165, 167) 41
Section 210(f) 42
Section 216 42

RAILWAY LABOR ACT 30

SECURITIES ACT OF 1933
(48 Stat. 84, 912, Tit. 15 U. S. Code) 41
Section 77(e) 41
Section 77(l) 41
Section 77(t) (b) 41

SHERMAN ANTI-TRUST ACT
(c. 647, 26 Stat. 209) 40
Section 4 40

UNITED STATES SHIPPING BOARD ACT
(46 U. S. Code) 41
Section 828 41
Section 829 41

MISCELLANEOUS

Conference Report of House of Representatives (No. 1371; 74th Congress) 42, 49

Excerpt from address of Charles Fahy, General Counsel of National Labor Relations Board, at Duke University on December 3, 1938 (Reported in 3 L. R. R. M. 1044) 35

Freund, Administrative Powers over Persons and Property (1928) 46

Harvard Law Review, Vol. 50, page 1071 30

Lewis' Sutherland on Statutory Construction [2nd Ed.], Sections 491-493 ..... 21, 40

REPORT OF THE HOUSE COMMITTEE ON LABOR AS TO WAGNER BILL (No. 972; 74th Congress) 21, 22, 24, 37, 45, 49

REPORT OF THE SENATE COMMITTEE ON EDUCATION AND LABOR AS TO WAGNER BILL (No. 573; 74th Congress) 20, 22, 49

Schulman, Civil Liability and the Securities Act (1933), 43 Yale Law Journal, 227 41

Supreme Court of the United States

OCTOBER TERM—1939

No. 342

AMALGAMATED UTILITY WORKERS, affiliated with UTILITY WORKERS ORGANIZING COMMITTEE, CONGRESS OF INDUSTRIAL ORGANIZATIONS

Petitioner

against

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies, *et al.*

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS

Opinions below

The memorandum Opinion of the Court below (R. 13) is reported in 106 Fed. (2d) 991. The Order of the Court below was entered on June 2, 1939, and is at R. 63. The Opinion of this Court in the review and enforcement proceedings in which the present motion was made is reported in 305 U. S. 197.

Jurisdiction

Petitioner Amalgamated Utility Workers (hereinafter usually referred to as "the Amalgamated" or "the C I O") seeks to invoke the jurisdiction of this Court by virtue of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, Sec. 1; 43 Stat. 938), and Section 10 (e) of the National Labor Relations Act (Act of July 5, 1935; c. 372, 49 Stat. 449). The petition of the Amalgamated for certiorari was granted by this Court on October 16, 1939.

Statute

The statute to be construed is the National Labor Relations Act (hereinafter usually referred to as "the Act"). The particularly relevant parts thereof are Section 10, subdivisions (a), (e) and (f), which are set out in the Appendix hereto (pages 51 to 53, *post*).

Question Presented

Petitioner stipulated (R. 2) its intention to bring up for review, and to rely upon, only the question as to whether or not it has standing to make and maintain in Court the motion (R. 13) which was denied by the Court below. In terms of the Act, we state the question as follows:

> *Where the National Labor Relations Board (hereinafter usually referred to as "the Board") has filed its complaint and conducted hearings as to violations of Section 8 of the Act, has made findings and issued an Order thereon, and has requested and obtained the entry of a decree of enforcement, does the Act authorize or permit one of the contending labor organizations to make an application in such proceedings to the Court to adjudge the respondent employers in civil contempt of Court for alleged failure to comply with the Board's Order in the re-*

spects cited and to "make effective" the Board's Order and otherwise "as the nature of this case may require" (R. 13)—the Board having itself taken no such action?

The standing of the movant to make the motion is to be considered with relation to the motion it made; i. e., the several categories of matters as to which the Amalgamated asks for an adjudication of civil contempt and further enforcement, without investigation, findings or request by the Board. In the *first* category are matters not litigated before the Board, not within the specific language of its Order, and not in the contemplation of the parties at the time of the review and enforcement proceedings. In these respects the motion in effect seeks from the Court various supplements, extensions and virtual amendments of the Board's Order. These matters include (R. 11; par. 15) the adjustment of grievances with grievance committees constituted under the Contracts (305 U. S. 197, 231-239; R. 40-48) with the International Brotherhood of Electrical Workers affiliated with the American Federation of Labor (hereinafter referred to as "the I B E W"); bargaining exclusively with the I B E W under the Contracts while refusing to bargain with the Amalgamated (R. 11-12; pars. 16-17); permitting I B E W representatives to come on employer premises for grievance committee work (R. 36-37) and denying like privileges to the C I O (R. 9, par. 10; R. 61-62); honoring assignments voluntarily executed by individual members of the I B E W requesting the deduction of their I B E W dues from their pay (R. 10, par. 13, R. 37); the alleged discriminatory transfer of two boiler cleaners temporarily from one station to another (R. 11, par. 14; R. 37-38), and alleged favoritism by minor supervisors for the majority labor organization (R. 10, par. 13; R. 28-30), etc.

The *second* category relates to matters of an administrative character necessarily vested in first instance in the Board, such as the Amalgamated claim (R. 12, par. 19) that the Companies did not sufficiently comply with the Board's

directions as to posting notices. The record shows the Companies' full compliance (R. 30-31, 49-57; Exhibits B, C, D and E), the Board's investigation of the matter in the field, and the absence of any report or ruling by the Board that its directions had not been fully carried out (R. 31).

Under such circumstances the Court below ruled (R. 13)—

> "Motion denied on ground that moving party has no standing to press a charge of civil contempt, if contempt had been committed. Under the National Labor Relations Act the Board is the proper party to apply to the Court for an Order of enforcement and to present to the Court charges that the Court's Order has not been obeyed."

Statement

Petitioner's statement and argument proceed on the assumptions that the Act was designed, not to protect public rights and public interests, but to redress "private grievances" and confer "private rights" on labor organizations; that the petitioner's standing as a "party" as of right in the proceedings against the respondents was broadly recognized by the Board and all Courts; that the decrees entered on March 21, 1938, and January 21, 1939, were "secured by it" (Brief, page 9); and that under the Act any interested labor organization has been given, to the exclusion of the Board or equally with it, the right and the authority to enforce, by civil contempt if need be, the "private rights" created and conferred by the Act. The pertinent facts as to the proceedings are as follows:

In the exercise of its authority under Section 10(b) of the Act, the Board issued a complaint[1] which alleged unfair

[1] See Transcript of Record in Docket No. 19—October Term, 1938 (*Consolidated Edison Company* v. *National Labor Relations Board*, 305 U. S. 197), pages 7-16. Petitioner's present motion was made and entitled (R. 1) in the review and enforcement proceedings which were before this Court upon this Transcript of Record.

labor practices forbidden by Section 8, sub-divisions (1), (2) and (3), of the Act. A "charge" had been filed with the Board by a predecessor of the Amalgamated. The complaint as served was several times amended by the Board[1]. The proofs in support of the complaint were presented solely by counsel for the Board. The Amalgamated did not ask leave to intervene[2]. Attempted participation by its counsel during the taking of testimony was excluded by the Trial Examiner[3]. The I B E W did not ask to be made a party, did not take part before the Board, and was not served with the complaint as from time to time amended by the Board.[4]

The Board found against the employers on virtually all counts[5], except that the Board dismissed without prejudice[6] the allegations of violation of Section 8, subdivision 2, of the Act, which makes it an "unfair labor practice" for an employer "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *". The Board's Order of November 10, 1937, directed the reinstatement of six named employees with back pay, and required the employers to cease and desist from giving effect to their Contracts with the I B E W and to do various other affirmative acts and things. For the Order and the modification thereof by the opinion of this Court in 305 U. S. 197, see pages 53 to 56 of the Appendix hereto.

---

[1] Transcript of Record in Docket No. 19, pages 13-15.

[2] The Act provides, in Section 10(b), that "In the discretion of the member, agent or agency conducting the hearing or the Board, any other person [in addition to the person complained of] may be allowed to intervene in the said proceeding and to present testimony".

[3] Transcript in Docket No. 19, pages 338-339.

[4] See 305 U. S. 197, at pages 233-234.

[5] Transcript of Record in Docket No. 19, pages 217-218.

[6] As to the effect of this action as to the I B E W, see 305 U. S 197, at page 233.

A proceeding to review the Board's decision and Order was instituted by the employers as "aggrieved" parties under Section 10(f) of the Act (305 U. S. 197). As also "aggrieved" by the Board's Order, the I B E W instituted its review proceeding (R. 1), argued the same before the Circuit Court of Appeals, and petitioned for and obtained certiorari for review by this Court. In the review proceedings, the Board filed answers, which also asked for cross-relief by way of enforcement of its Order (95 Fed. (2d) 390, 392). The decree of enforcement entered March 21, 1938, was granted solely upon the "prayer" of the respondent Board, and so stated[1] (Transcript in Docket No. 19—October Term—1938, page 1748).

The Amalgamated's predecessor did not claim to be "aggrieved" by the Board's Order; it filed no petition for review; it instituted no proceeding to enforce the Order. Upon the hearing of the review and enforcement proceedings in the Circuit Court, counsel for the Amalgamated's predecessor asked the Court to permit his client "to intervene in this proceeding." He did not assert any right of intervention under Section 10(e), which empowers the Board to petition for the enforcement of an Order, or under Section 10(f), which authorizes a person "aggrieved" by an Order of the Board to petition that it be reviewed and thereupon vacated or modified. He asked only "that I be permitted to argue and file a brief on its behalf, both on the

[1] The Judgment read as follows: "IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT. CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., et al., Petitioners *vs.* NATIONAL LABOR RELATIONS BOARD, Respondent. JUDGMENT—Filed March 21, 1938. Petitions by the Consolidated Edison Company of New York, et al., for review of an Order of the above named respondent, and a prayer by said respondent for enforcement of said Order having come on to be heard, Upon consideration thereof it is Ordered that the prayer of said respondent for the enforcement of the Board's Order be and the same is hereby granted. Wm. Parkin, Clerk. [File endorsement omitted.]"

motion for a stay, as well as on the final argument of this case on the merits." The Court granted this limited application by a notation endorsed "Motion Granted"[1]. The opinion of the Court designated the applicant merely as "intervenor" (95 Fed. [2d] 390, 392). Because counsel for the Amalgamated's predecessor had filed a brief and argued in the Circuit Court of Appeals in support of the Board's Order, his application to do the same things in this Court was not contested. Only in that sense and to that limited extent was the Amalgamated (or its predecessor) an "intervenor" or a "party" at any stage of the review and enforcement proceedings.

The final decree (R. 8-9) entered by the Court below upon the Board's application on January 21, 1939, in pursuance of the Mandate of this Court, struck from the Board's Order of November 10, 1937, the provisions of its Paragraph (f), which would have nullified the respondents' collective bargaining Contracts with the I B E W, the labor organization of which a large majority of the respondents' employees were undisputedly members at the time of the prior proceedings (305 U. S. 197, 232) and still are members (R. 28-29, 32-34, 58). Aside from the modification as to the Contracts, the enforcement decree of March 21, 1938, was affirmed; and that decree recited that "said Board having filed a request for the enforcement of said Order, issued on November 10, 1937" (R. 8).

Nature of the matters on which the petition asks adjudication

Petitioner's statement in this Court does not stress or make clear the nature of the relief sought and the nature

[1] Transcript of Record in Docket No. 19—October Term, 1938, page 1735.

and scope of the matters on which the Court below was asked to pass in first instance, without the aid of any investigation and findings by the Board. In the Court below, the Amalgamated stated its object to be to "procure enforcement rather than the recovery of money" (Amalgamated's Brief in the Circuit Court, page 3). The petitioner's standing to ask the relief sought (R. 13) was determined in the light of the petition, the nature of the matters on which the Court was asked for an adjudication, and the facts appearing[1]. A statement of these matters is appropriate.

Having made and entitled its petition in the same review and enforcement proceedings (R. 1) which were before this Court in 305 U. S. 197, Amalgamated gave the I B E W notice of its motion and also notified the Board and its Regional Attorney (R. 3-4). Its petition was in form and effect a motion for an adjudication that various matters specified be adjudicated as constituting contempt. This was

---

[1] Petitioner's Brief (page 8) complains of the inclusion, in the Transcript of Record, of Mr. Carlisle's affidavit (R. 26-40), which is by many references an integral part of the respondents' answer (R. 14-25) to the Amalgamated's lengthy motion papers, which are printed at R. 3-13. The papers printed in the Transcript were those agreed upon and stipulated by counsel. Inasmuch as Mr. Carlisle's affidavit (R. 26-40) tends to clarify the legal issues as to the Amalgamated's standing as hereinafter appears, the affidavit was properly included in the Transcript. Petitioner's brief (page 7) refers to the omission, from the Transcript, of the notices of motion to dismiss, served respectively by the respondents and by the I B E W. These two motions were denied by the Court below on the ground that the matters submitted in support thereof should properly be asserted (as they were also) in opposition to the motion to punish for contempt (R. 68, 23-25). As the Court ruled that the Amalgamated has no standing to make the contempt application to which the motions related, naturally neither the respondents nor the I B E W have sought to review the denial of the motions to dismiss; and the Amalgamated has failed to do so. The grounds of the respondents' motion to dismiss are stated in their answer at pages 23-25. The Court below considered, and upheld as we see it, the grounds stated in Paragraphs XVII and XVIII of the answer.

sought in furtherance of enforcement of the Board's Order and claimed "special rights of the petitioner", "guaranteed under the Act" and as provided in the Orders of this Court (R. 13).

The matters alleged in the petition were properly related to the period after the entry of the enforcement decree of January 21, 1939, although some of the alleged incidents ante-dated that. They were in the nature of matters arising after this Court's decision and the final decree enforcing the Board's Order as modified, and in large part by virtue of this Court's decision as to the continuance of the I B E W Contracts in force (305 U. S. 197, 231-239). In the nature of things, such matters had not been litigated before the Board or in the Courts, and had not been the subjects of investigation and findings by the Board. As to at least the claimed insufficiency of the posting of notices, the Board had made a field investigation and had made no report of insufficiency (R. 31).

In form as well as avowed objective, the Amalgamated's motion and prayer (R. 13) were designed to secure an *adjudication* that various matters constituted civil contempt, and thus in effect to secure a supplemented and extended decree of enforcement covering matters on which the Board and the Courts had not passed, rather than to secure punishment or penalties. Specifically, the petition asked (1) that the respondent Companies, etc., be adjudged in contempt of the decree of the Circuit Court of Appeals "for having failed to comply with its decree dated March 21st, 1938, as amended by its decree dated January 21, 1939" (R. 13); and (2) that the Court "take such action as shall appear just, reasonable and necessary to make effective the Order of the National Labor Relations Board, as ordered to be enforced by this Court" (R. 13).

Although the petitioner's prayer for relief thus left it wholly and vaguely with the Court to shape the mode of

further enforcement "as shall appear just, reasonable and necessary" (R. 13), the Amalgamated stated to the Court below that its primary purpose in bringing the contempt proceeding was to obtain from the Court a further or more specific Order "(a) directing specifically the discontinuance of the privileges now extended I. B. E. W., or (b) directing the extension of these privileges to Amalgamated" (Amalgamated Brief in the Circuit Court, page 5). Indeed, the C I O preferred the latter course, on the ground that "in order to avoid future applications for punishment of further violations, the best, perhaps the only, way of remedying the situation is by specific direction of the extension of the same privileges to Amalgamated" (*Ibid*, page 5).

The acts alleged and complained of in the petition, and whatever affirmative action is specified in the present prayer for relief, thus vary substantially from both the Board's complaint which initiated the proceedings[1] and the relief granted by the Board's Order[2]. What the petitioner mainly seeks by its motion, aside from the advantage of an adjudication of contempt, is to obtain, without resort to the Board, a decree of Court enjoining or prohibiting various specific things which have arisen since the prior proceedings.

Neither the issues of fact thus raised, nor the proposed extensions and supplements of the Board's Order of November 10, 1937, have been passed upon by the Board as the body having primary jurisdiction of such matters. If these matters have been submitted by the C I O to the Board, the latter has not acted upon them, has not made findings of fact as to them, has not started any contempt proceeding, and in any event has not made any supplementary or modifying Order covering the matters

[1] Transcript in Docket No. 19—October Term, 1938, pages 12-15.
[2] See Appendix, pages 51-53.

complained of by the C I O, and has not asked the Court below to supplement or amend its decree of enforcement. In effect, the C I O thus claims standing and authority to invoke single-handed the Court's aid to supplement and extend the enforcement provisions of the decree entered upon the Board's application on January 21, 1939, and further claims the right to do this, not only on the basis of the C I O's own independent and unreviewed determination of subsequent and different facts, but also by a method of enforcement supported by no fact finding by the Board and no determination or Order by the Board.

Answer of the respondents

The respondent Companies answered the motion fully on the merits (R. 14-62), and among other things showed affirmatively (R. 22-23) that about 65 per cent of their eligible employees are members of the I B E W *with dues fully paid* (R. 28-29, 32-34, 58), which establishes the identity of the majority labor organization that under Section 9(a) has the right to speak and act for the employees in matters arising under the Act. Section 9(a) commands the employer to deal with the labor organization to which a majority of its employees belong; the same language has been held to impose the negative duty to deal with no other. The Board has itself held that an employer is under no duty to bargain with, or to deal with grievance committees of, a Union which does not constitute or represent a majority of the employees (*Mooresville Cotton Mills and Local 1221, U. T. W. A.*, II NLRB 952; *Matter of Williams Manufacturing Company*, VI NLRB 135). The Amalgamated's motion papers here make no claim of right to represent the majority of the employees. Its motion is thus by a small *minority* labor organization, and is in oblique attack on, and in derogation of, the Contracts, arbitration procedures, grievance committee adjustment of potential disputes, etc., which were sustained and commented on by this Court (305 U. S. 197, 231-238).

The answer showed that respondents have not violated Section 8(5) or Section 9(a) of the Act, and have followed the decision of this Court as to the Contracts in force with the majority labor organization. Acts done in obedience to Section 9(a) and pursuant to valid Contracts with the majority Union could not violate the Board's Order as modified. Further defenses were stated (R. 23-24), including a challenge of the standing of the Amalgamated, under the circumstances appearing, to make such an application to the Court as to an Order made by the Board pursuant to the Act and decreed, with certain modifications by this Court, to be enforced at the instance of the Board (R. 23). The respondents also filed affidavits (R. 26-62) which, with the documents attached as "exhibits", showed in detail the Companies' compliance with the decree of January 21, 1939, and with the Board's Order as so modified. The I B E W also appeared in the Court below and contested the standing of the Amalgamated to make and maintain, under the circumstances, the application denied by the Court below.

As the petitioner stipulated (R. 2) that it would bring up for review, and would rely on, only the question of its standing to institute such a contempt proceeding, the detailed affidavits which supported both the answer (R. 14-25) and Mr. Carlisle's answering affidavit (R. 26-62) were not offered by the petitioner for printing in the record here.[1]

Petitioner's moving papers do not state whether or not all or any of the matters alleged in its moving papers were in first instance submitted by it to the Board. In any event, the moving papers do not allege any investigation, findings, or decision by the Board thereon.

---

[1] See footnote on page 8.

ARGUMENT

POINT I

The National Labor Relations Act does not give to a contending labor organization equal or greater powers than those of the Board, in the initiating and control of enforcement procedures

The unusual feature of this proceeding is that although the Board, acting under its statutory powers and after full hearings upon its own complaint, entered an Order against the respondents, upheld its Order in review and enforcement proceedings, and secured at its own sole request a decree for the enforcement of its Order, the petitioner here in proceedings for an adjudication of contempt and for a supplementing and extension of the Board's Order is not the administrative agency[1] but is one of the contending labor

---

[1] Where the Board has found, upon investigation, that in its opinion contempt proceedings should be instituted because of non-compliance with decrees enforcing its Orders, the Board has instituted, and the Courts have entertained, such proceedings. See:

National Labor Relations Board v. *Bell Oil and Gas Company*, 98 Fed. (2nd) 405; rehearing denied 99 Fed. (2nd) 56 (C. C. A., 5th);

National Labor Relations Board v. *Hopwood Retinning Company*, 104 Fed. (2nd) 302, 303 (C. C. A., 2nd). Opinion shows that the Board's motion was supported by "affidavits • • • from officials and attorneys of the Board's Second Region located in New York, from officials of the Unions involved, and from twelve production employees, drivers and helpers," which indicates that the Board conducted an investigation as to violations of its Order *before* it went to Court with a contempt proceeding;

National Labor Relations Board v. *Eavenson and Levering Company*, (C. C. A., 3rd), not yet officially reported; 4 L. R. R. 973;

National Labor Relations Board v. *Carlisle Lumber Company* (C. C. A., 9th), not yet officially reported; 5 L. R. R. 440;

National Labor Relations Board v. *Pacific Greyhound Lines*, 106 Fed. (2nd) 867 (C. C. A., 9th).

organizations. The governmental body having been the moving agency in the prevention proceedings hitherto had, a private labor organization now not only takes the initiative into its own hands but argues here that its own right is clear while the Board's right to move would be at least doubtful (Brief, page 21).

Respondents' contention is that the Act primarily protects the public right to commerce unobstructed by labor controversies, and in so doing provides the procedures whereby disputes due to denial of the rights of employees can be prevented from endangering industrial peace; that the initiative and control of all prevention and enforcement procedures have been placed in the hands of the administrative agency[1], not in any private hands; and that the Act, having been enacted and upheld on the ground that it vests in the Board the authority to prevent labor disputes which may endanger the public right, should not now be construed to place that authority solely or equally in private hands.

Theory of the Amalgamated's claim

For certainty that the petitioner's claim of paramount rights by virtue of the Act is not misstated, we bring together the following quotations[2] from its brief:

> "The National Labor Relations Act creates private rights" (Brief, page 17).
>
> "* * * the Act was designed *to confer rights upon individuals and associations*" (page 13).

---

[1] The standing of a Federal agency to utilize the procedure of a civil contempt was upheld in *McCrone* v. *United States*, 307 U. S. 61. See, also, footnote on page 13, *ante*.

[2] The *italics* shown in the following quotations from the petitioner's brief are in the original.

"* * * unfair labor practices are not 'unlawful',— *they are merely infringements of the private rights created by the Act*" (page 17).

"* * * there is no duty imposed by the Act upon the National Labor Relations Board, except the ordinary duty, imposed on all Courts, to act judicially when it does act. * * * the National Labor Relations Board was intended to be an industrial court of first instance" (pages 21-22).

"* * * the National Labor Relations Act does not define any public wrongs * * *. There are no Public Wrongs defined in the Act * * *" (page 22).

"* * * those whose rights have been found to have been invaded and for whose benefit the remedies have been prescribed, have rights which they may assert in Court *in propria persona,* and without the intervention of the National Labor Relations Board" (page 13).

"* * * while the rights are those of individuals, *their enforcement and exercise* is clearly placed in the hands of labor organizations" (page 18).

"The right of Congress to legislate on the subject is due entirely to the fact that the *private grievances* of certain individuals and groups in a matter in itself not subject to Federal regulation has been found to habitually lead to certain *action on the part of those individuals and groups* * * *" (page 14).

"In fact, we doubt very much whether the National Labor Relations Board has the power to protect the Petitioner's rights by a motion to punish for a *civil* contempt" (Brief, page 21).

We have brought together and quoted the petitioner's basic contentions at some length, for the reason that they seem to us virtually to answer themselves, under the decisions of this Court, the language of the Act, and the Reports which accompanied its enactment in the Congress.

Petitioner answered by its own previous contentions

But first they may be answered from the brief of the same Amalgamated, by the same counsel, before this Court in *Consolidated Edison Company* v. *National Labor Relations Board* (305 U. S. 197). Counsel for the Amalgamated there argued that the purpose and effect of the Act were to transfer "the entire problem of employer-employee relationship into the domain of public law" (Brief in that case, page 99), and that

> "one of the basic principles established [by the Act] is that collective bargaining on behalf of employees is not a private right, to be acquired by contract with an employer, but a public office to be conferred by the employees" (*Ibid*, page 99).

The Amalgamated then took the position before this Court that even *contractual* rights acquired through collective bargaining are of a public rather than a private nature under the provisions of the Act, and are therefore subject to the "supervision of the public authority charged with the enforcement of the Act" (*Ibid*, page 100).

The Act declares public policy and fortifies public rights

The right of employees to organize themselves and to bargain collectively through representatives of their own free choice does not date from the enactment of the Act in 1935 and was not created by the Act. Its protection has long been regarded as in the public interest, and not merely a concern of particular employees and labor organizations involved. In any event, it had been recognized by the Courts as a fundamental right of wage workers, prior to and independently of the Act. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33.

The Act recognized these rights and provided ways and means of their protection and enforcement by public authority. In so doing, the Act declared it "to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce," etc. (Section 1); the Act stated in detail the public interests found to have been affected adversely by labor disputes, strikes, etc. (Section 1); the Act brought the Federal government into action to eliminate specified causes of industrial strife which burden commerce and were said to be due to inequality of bargaining power between employers and employees (Section 1).

Undoubtedly, an effect of all this was intended to be, through Board action, greater security for the rights of employees and organizations of employees; but these incidental private advantages were subordinate to the public purpose. The Act enumerated, and to some extent defined, various practices, by employers, which were found injurious to the public right to unobstructed commerce; and the Act set up an administrative agency and provided enforcement and review procedures in the Courts, for the prevention and punishment of such offenses. The question here is *not* as to the nature of the employees' right to self-organization and collective bargaining independently of statute, but whether the function of protecting commerce from the practices condemned by the Act is vested in the administrative agency or, as claimed by the Amalgamated, is vested in the Amalgamated, equally with the Board or to the exclusion of the Board.

Grounds on which the Act has been upheld

The Amalgamated's present contentions disregard and endanger the grounds on which the validity and application of the Act have been upheld by this Court. The Board's power to prevent and redress unfair labor practices affecting commerce was upheld in the *Jones & Laughlin* case and

subsequent decisions, on the ground that the Congress had found that the proscribed acts directly burdened and obstructed interstate commerce or its free flow. It is only when and where labor controversies may lead to strife which in turn may obstruct that commerce, that the Congress has empowered the Board to act to protect that commerce, even when the employer, the employees, and the enterprise, are intra-state and local (*Consolidated Edison Company* v. *National Labor Relations Board*, 305 U. S. 197, 220-221; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601).

The petitioner at one point concedes that the power of the Congress to legislate against unfair labor practices does not flow, as in the case of the Interstate Commerce Act, from a constitutional grant of power to legislate directly on the subject, but is derived from an indirect concern with the effects upon commerce of the industrial practices sought to be prevented (Brief, page 14). The public interest and right as to interstate commerce unobstructed from any of the specified causes or sources are thus paramount and are the chief concern of the Act; and the protection and advantages thereby afforded to private persons and labor organizations are incidents which do not give rise to procedural rights or place private labor organizations in the stead of the Board, or on a parity with it, as the enforcement agency.

Remedies and procedures are inter-dependent

The Act provides within its text a comprehensive plan for investigation, fact-finding, prevention and enforcement. Plenary powers of investigation are conferred on the Board (Section 11). The Board is empowered "to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce" (Section 10(a)). Unfair labor practices may be brought to the attention of the Board (Sections 8, 10(b)). Proceedings as to unfair

labor practices are only upon the Board's own complaint (Section 10(b)). An interested person or labor organization who may be adversely affected by the Board's action may be permitted to intervene and be heard by and before the Board (Section 10(b)). If the Board is of the opinion, as a result of proceedings, that the person complained of has engaged in an unfair labor practice, the Board is directed to issue an Order directing such person to desist from such practices and commanding such appropriate affirmative action "as will effectuate the policies of this Act" (Section 10(c)). The right of the majority labor organization to speak and act for all of the employees may, when denied or questioned by an employer, be democratically established, through electoral processes conducted by the Board (Sections 8(5) and 9). As to a determination by the Board in the form of an Order, the Board may petition the appropriate Court "for the enforcement of such Order" (Section 10(e)). A person or labor organization "*aggrieved*" by a Board decision and Order may petition the Court for review (Section 10(f)).

Orders of the Board become effective only upon the granting of a decree of enforcement by the appropriate Court at the instance of the Board (Section 10 (e)). The authority of the Court to grant enforcement under the Act is closely tied to the Board's initiative. Precedent conditions to a judicial decree of enforcement in the field of labor relations are a complaint by the Board, fair and full hearings before the Board, findings of fact by the Board, an Order by the Board, a petition by the Board to the Court for enforcement, the entry of the decree at the Board's request. At each step, the initiative and control of the prevention and enforcement proceedings rest with the Board; only in the case of a person "aggrieved" by a Board Order is an initiative as to an application to the Court necessarily placed in private hands; e. g., the right of anyone aggrieved *by the Order* to petition for *review* of the Order.

The Act and the Order of the Board, rather than the decree of the Court, determine and impose the duties of the respondent employers, inasmuch as it is the Board which makes the directions which it finds to be appropriate to "effectuate the policies of this Act."[1] The statute provides for a stay during review proceedings, on proper showing; and under the Act the decreed enforcement is akin to the affirmance of an administrative determination.

The initiative and discretion as to proceedings, and the fact-findings as to what action will effectuate the policies of the Act, having been vested in the Board, it should be noted that as to the supplements, extensions, modifications and interpretations which the Amalgamated here claims standing to ask the Court to make as to the Board's Order in the light of subsequently arising circumstances and conditions, there have been no complaint, hearings, fact-findings, decision or Order, by the Board (see pages 9 to 11, *ante*).

The Act expressly makes its procedures exclusive

Section 10 of the Act is entitled "Prevention of Unfair Labor Practices". It contains in subdivisions (b) to (i), both inclusive, all of the provisions for the prevention of such practices and for the enforcement and review of the Board's Orders. But Section 10 *first provides*, in subdivision (a), that—

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

We submit that this provision could hardly have been made more sweeping or more conclusive. It is also in accord with familiar law. As the concept of "unfair labor prac-

[1] The purpose of an enforcement proceeding is to obtain obedience to the Board's Order. The Board may petition to that end "if an Order of the Board is disobeyed." Senate Report No. 573; 74th Congress, 1st Session; page 15.

ices" is statutory, those who seek to advantage themselves y obtaining their prevention or punishment must follow the tatutory procedure therefor. *Lewis' Sutherland on Statutory Construction* [2nd Ed.], Sections 491-493. In seeking to nforce what the petitioner here states to be "statutory ights" (Brief, page 3), the remedies and procedures provided by the statute must be followed (*Blankenship* v. *Kurfman*, 96 Fed. [2d] 450, 454). The Congress generally conorms and limits the procedures according to whatever may e the "statutory rights" under the particular law. Thus he Congress, having given to shippers a private right to eparations under the Interstate Commerce Act, provided lso for a private independent action to enforce that right 49 U. S. C. A., §§ 9, 13, 16). On the other hand, as the 'ederal Trade Commission Act defines and proscribes "unair trade practices" which are injurious to public interests, ut creates no private rights apart from the public rights rotected through procedure before and by the Commission, hat procedure is not a private means of enforcing private ights but is held to be a public procedure looking only to ublic ends (*Federal Trade Commission* v. *Klesner*, 280 J. S. 19, 25).

ntent of the Congress was plainly stated

The Congress made it clear that, by adapting from the 'ederal Trade Commission Act the concept of "unfair ractices" and making the remedies and procedures under he National Labor Relations Act analogous to those under he Federal Trade Commission Act, there was no intention hat the Wagner Act should create private rights of action r compel the new administrative agency to share or yield s powers to those of contending labor organizations. ll this was specifically stated in the Congressional Reports ccompanying the Wagner bill. The Report of the House 'ommittee on Labor stated:[1]

> "The Board is empowered, according to the procedure provided in Section 10, to prevent any person

[1] House Report No. 972; 74th Congress, 1st Session, page 21.

from engaging in any unfair labor practice listed in Section 8 'affecting commerce', as that term is defined in Section 2 (7). This power is vested exclusively in the Board and is not to be affected by any other means of adjustment or prevention. The Board is thus made the paramount agency for dealing with the unfair labor practices described in the bill.

"The procedure provided is analogous to that in the Federal Trade Commission Act (Sec. 5) and is familiar to all students of administrative law. * * *"

It will be noted that Section 10(a) of the Act quoted (quoted on page 20, *ante*) is in almost the language of the first paragraph above set out from the House Report. After outlining also the relief which Board Orders may include by way of affirmative action, the House Report said:[1]

"* * * No private right of action is contemplated. Essentially the unfair labor practices listed are matters of public concern, by their nature and consequences, present or potential; the proceeding is in the name of the Board, upon the Board's formal complaint. The form of injunctive and affirmative order is necessary to effectuate the purpose of the bill to remove obstructions to interstate commerce which are by law declared to be detrimental to the public weal."

In describing the purpose of Section 10(a), the Senate Committee on Education and Labor said, in its Report:[2]

"Section 10 (a) gives the National Labor Relations Board exclusive jurisdiction to prevent and redress unfair labor practices, and taken in conjunction with Section 14, establishes clearly that this bill is paramount over other laws that might touch upon similar subject matters. Thus it is intended to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American Law regarding collective bargaining."

[1] House Report No. 972; 74th Congress, 1st Session, page 21.

[2] Senate Report No. 573; 74th Congress, 1st Session, page 15.

The foregoing excerpts from the Reports in the Con-ess should be decisive. The Courts will be guided strongly such evidences of the legislative intent, and will not read to the Act provisions which are not there and are, as re, expressly negatived.

American Federation of Labor v. *National Labor Relations Board*, — U. S. —; decided January 2, 1940.

Full consideration of the Congressional declarations and e provisions of the Act leads alike to the conclusion that ere is "no provision in the Act which can be construed as tending to create rights for employees which can be en-rced in Federal Courts independently of action by the ational Labor Relations Board".

Blankenship v. *Kurfman*, 96 Fed. (2d) 450, 454.

ocedure analogous to that under Federal Trade Commission Act

The petitioner seeks to differentiate between the pro-sions of the Federal Trade Commission Act and the Na-onal Labor Relations Act on the ground that the former concerned with public wrongs and was not designed for e protection of individuals and groups who are affected the unfair trade practices (Brief, pages 13-16). Con-ding that the procedure under the Federal Trade Commis-on Act is designed solely to safeguard public rights (Brief, ge 28), the Amalgamated argues that procedures provided the two statutes are not analogous.

The Congressional declaration that no private right of ion was contemplated by the Wagner Act and that the ocedures provided in that Act are analogous to those pro-led in the Federal Trade Commission Act seems to us leave no ground for doubt as to the primarily public aracter of the rights protected by the Wagner Act and of procedures, through which those rights are to be safe-

guarded by the initiative and the preventive measures of the Board. The Congressional declarations are decisive against the petitioner's contention that the Act was intended to assimilate its procedure to that provided in the Interstate Commerce Act rather than to that provided in the Federal Trade Commission Act. The contemporary Reports in the Congress show clearly that Congress has not only carried over the concept of "unfair trade practices" into the field of "unfair labor practices" but also intentionally appropriated the procedure under the Federal Trade Commission Act and did so for the reason that the procedure so adopted was, except where otherwise expressly limited, deemed to be appropriately designed to protect primarily public rights.

Petitioner's argument as to other statutes

Apart from the legislative declaration, an examination of the procedure provided in the Act will be found, on examination, to be like that provided in the Federal Trade Commission Act and wholly unlike that provided in the Interstate Commerce Act. As appears from a comparison of the quoted passages from the Report of the House Committee on Labor (H. R. Rep. No. 972, *supra*) and the opinion in the *Klesner* case, *supra*, the procedure under both Acts requires that a formal complaint be brought in the name of the Commission or Board, and that the prosecution be wholly that of the government, which bears the entire expense of the prosecution. Neither Act gives the person aggrieved by an unfair labor practice or unfair method of competition a right to institute before the Board or Commission a complaint against the wrongdoer. Such a person may file a charge of wrongdoing and request that action be taken. But it is for the Board or Commission to say whether a complaint shall issue or that a prosecution follow. The denial of the request is final. Mandamus or other process of the Courts will not lie to compel it to proceed.

If the request for action is granted, the purpose of the proceeding is for the protection of the public. The protection afforded to the person filing a charge or request for action is an incident. The person making the request or charge does not become the complainant in the proceeding or obtain any control over it. As shown at page 5, *ante*, the Amalgamated was not allowed by the Board to take part in the examination of witnesses at the hearings, nor was it able to argue or file a brief in the enforcement proceedings without obtaining special permission to do so from the Circuit Court (see pages 6 and 7, *ante*).

The fact that the Amalgamated would be *benefited* by a present supplementing, extension, interpretation, or "further enforcement", of the Board's Order does not give the Amalgamated equal or exclusive right to initiate steps in Court to bring that about, without proper proceedings and petition by the Board. This Court has held, with respect to Section 5 of the Federal Trade Commission Act, that it "does not provide private persons with an administrative remedy for private wrongs", notwithstanding that the Act was intended to prevent proscribed unfair trade practices which, along with the violation of the public interest, also directly injure private persons in their business.

Federal Trade Commission v. *Klesner*, 280 U. S. 19, 25.

National Labor Relations Act unlike Interstate Commerce Act

Petitioner argues that the National Labor Relations Act should be construed with a view to providing private procedures for the redress of private grievances, as under the Interstate Commerce Act. It is argued that the purpose of the National Labor Relations Act is "exactly like that of the Interstate Commerce Act, which was designed to prevent certain industrial practices" that bring direct injury to groups and individuals (Brief, pages 14-15).

The concepts and procedures under the Interstate Commerce Act are wholly unlike those of the National Labor Relations Act. The former creates a private administrative and judicial remedy, e. g., any interested person deeming himself aggrieved may file and prosecute a complaint *as of right*, at his own expense; and the carrier is required to answer, all as in civil judicial proceedings (Section 13 (1); see *Federal Trade Commission* v. *Klesner, supra*). An individual shipper is given the right to reparation, and procedure is expressly provided for a suit by the shipper in Court to enforce an Order of the Commission for reparation (Sections 9, 13, and 16).

Petitioner points to the provisions of Section 9 of the Commerce Act as granting alternative remedies, one before the Board and the other before the Court. In construing Section 9 in *Pennsylvania Railroad Company* v. *Puritan Coal Mining Company*, 237 U. S. 121, 128, this Court said:

> "It will be seen that this Section does more than create a right and designate the Court in which it is to be enforced. It gives the shipper the option to proceed before the Commission or in the Federal Courts. The express grant of the right of choice between those two remedies was the exclusion of any other remedy in a State Court; * * *"[1]

The provisions of Section 9, when considered in the light of Sections 13 (1), and 16 (2), (4), (12), have this further significance and pertinence to the point at issue, viz., they clearly indicate that when a statute deals with matters of public concern which are placed in the keeping of an administrative agency and the Congress intends to confer also private rights, it provides also, expressly and clearly, an appropriate procedure therefor, with an opportunity

---

[1] To avoid giving the Federal Courts exclusive jurisdiction, a proviso preserving common law remedies was added to Section 22 (237 U. S. 121, 129).

to proceed and be heard as of right and to institute suit independently of and without the authority of the administrative agency.

The National Labor Relations Act is plainly different. As we have shown on pages 18 to 20, *ante*, no one but the Board is made the final arbiter as to when a complaint should be filed, hearings had, findings made, an Order issued, enforcement applied for, etc. There can be no merit in petitioner's belief (Brief, page 21) that a civil contempt proceeding could not be brought by the Board[1], but only by a private party "whose rights have been involved."

Incidental private benefits do not confer standing to sue

But even under the Interstate Commerce Act, a distinction is recognized between shippers whose independent rights are violated and those whose interest or advantage claimed to be violated is merely an incident of, and dependent upon, the rights of others. This distinction found application in a case involving the Commission's failure to suspend a new rate structure and thereby to re-establish lower rates enjoyed under the superseded tariff. *Sprunt and Son* v. *United States*, 281 U. S. 249. It was there held that the facts did not show violation of any independent right of a shipper and so did not give him sufficient status to maintain an independent suit, inasmuch as his advantage is merely "an incident of, and hence was dependent upon,

[1] See footnote on page 13, *ante*, listing many instances where the Board found, upon investigation, that in its opinion contempt proceedings should be instituted because of non-compliance with decrees enforcing its Orders; and the Board has instituted, and the Courts have entertained, such proceedings. The standing of a Federal agency to utilize the procedure of a civil contempt was upheld in *McCrone* v. *United States*, 307 U. S. 61.

the right, if any, of the carriers to maintain that tariff in force" (*Ibid,* pages 254-258).[1]

Here the Board's findings and Order were made, and the Court's enforcement decree was entered at the request of the Board, to the end of fulfilling the Board's primarily public function of preventing and redressing unfair labor practices "affecting commerce." The Amalgamated does not show or claim any interest in "commerce" that is personal to itself or its members. The advantages which the Amalgamated or any other labor organization may enjoy thereunder are an incident of, and hence are dependent upon, the authority and direction of the Board to take such steps as it may deem to be appropriate, to the end that its Order may be enforced primarily for the protection of the public. No private right of the Amalgamated has been violated, for the Congress made it clear that the Act would confer no private rights.[2] Even if the procedure expressly set out in the Interstate Commerce Act were read into the National Labor Relations Act by implication (for which there would be no warrant under the most recent rulings of this Court), the *Sprunt* case indicates that the Amalgamated would still have here no legal right or sufficient status to initiate any step of enforcement independently of and without the authority of the Board.

Rulings in the various Circuits

There has been no lack of uniformity in the decisions, in the various Circuits, as to nature of the rights and procedures created by the Act and as to claims of right of private persons or labor organizations to take the initiative in Court to enforce benefits they would gain under the Act.

---

[1] It thus appears that when action by the Interstate Commerce Commission is for the protection of public interests, and the protection thereby afforded to private persons is the incident, that interest alone does not give him the right to maintain an independent suit. Cf. *Federal Trade Commission* v. *Klesner,* 280 U. S. 19, 27.

[2] See page 20, *ante.*

The ruling in the Second Circuit is not solitary or at variance. The Fifth, Sixth, Seventh and Ninth Circuits have held the procedure provided by the Act is not and cannot be "made a private one to enforce a private right. It is a public procedure, looking only to public ends."

Agwilines, Inc. v. *National Labor Relations Board*, 87 Fed. (2d) 146, 150 (C. C. A. 5th);
National Labor Relations Board v. *Colten, et al.*,[1] 105 Fed. (2d) 179 (C. C. A. 6th);
Blankenship v. *Kurfman*, 96 Fed. (2d) 450, 454 (C. C. A. 7th);
National Labor Relations Board v. *Hearst*, 102 Fed. (2d) 658, 664 (C. C. A. 9th);
National Labor Relations Board v. *Carlisle Lumber Company*, 99 Fed. (2d) 533, 537 (C. C. A. 9th).

POINT II

To uphold the claim of a contending labor organization to equal or superior proctorship of proceedings to enforce the Board's Orders would subvert the Act and its administration

The Act is relatively new legislation in a complex and difficult field. Its administration is likely to be perfected by experience; its procedures as well as substantive provisions are likely to be improved by amendments suggested

[1] In this case the employer contended that the affirmative provisions of the Board's Order, which required him to reinstate with back pay a discharged employee, were invalid by reason of the dissolution of the partnership terminated by the death of one of the partners and the consequent termination of the employer-employee relationship. In overruling this contention, as to the effect of other principles of law upon the Act, the Court held that (page 182):

"This contention, however, ignores the essential nature of regulatory statutes of the class here considered, and the scope and purpose of administrative orders made in exercise of powers conferred by such legislation. They are to implement a public social or economic policy not primarily concerned with private rights, and through remedies not only unknown to the common law but often in derogation of it."

by experience. Contentions that the Act should be made to provide remedies and procedures admittedly not explicit in its text should be addressed to the Congress, not to this Court.

American Federation of Labor v. *National Labor Relations Board*, U. S. ; decided January 2, 1940.

Inherent in such a statute is the concept that in theory at least, the administrative agency is, or in due course will become, somewhat of an expert or technician, more familiar than others with the problems involved and with the exigencies of the particular situations at hand, and inclined to shape and time its action according to a long-range plan for effectuating the policies of the statute.[1] With such an agency, disinterestedness as well as impartiality come to be presumed, and the exigencies of particular demands and pressures tend to be withstood. No reason yet appears for expecting the operation of different trends as to the National Labor Relations Act and its administration.

In the motion here under consideration, it was sought to call the respondents to the bar of the Court below in answer for alleged contempt; and this was done, not by a governmental agency sworn to carry out fairly and in good faith the intent and provisions of the mandate of the Congress, but by a rival Union which has been and is in bitter contest with the Union which has as its members a large

[1] The comment of Professor Calvert Magruder (now United States Circuit Judge in the First Circuit), in 50 Harv. Law Rev. 1071, "Development of Collective Bargaining", is pertinent here. He pointed out (at pages 1090-91) that the Congress did not adopt for the National Labor Relations Act enforcement provisions like those set out in the Railway Labor Act, under which the representative of the aggrieved employees must apply to the Department of Justice or bring a bill in equity to compel observance of the law. Professor Magruder stated that the Congress "apparently thought that more effective enforcement would result from entrusting it to an expert administrative agency which would 'provide specialized treatment of the factual aspects of a specialized type of controversy' ".

d indisputable majority of the respondents' eligible em-
oyees (R. 28-29, 58). The question here is whether this
urt, in the absence of express provisions in the Act, and
the face of the stated intent of the Congress to omit
h provisions, should give the proctorship over enforce-
nt proceedings to a private, biased, and specially inter-
ed labor organization, to aid it in its warfare on the
jority Union and its rights under Section 9(a) of the Act.
ch a bestowal, in derogation of the orderly functioning of
administrative agency, could only have disastrous effects
the long run.

The question is not merely whether the C I O shall be
rmitted here to "by-pass" the Board and achieve a stand-
superior or equal to that of the Board. The adminis-
tive process of investigation and fact-finding is also to
"by-passed", and such matters are to be brought to
urt solely on the basis of the C I O's biased and *ex parte*
ions of its own interests. The Court is to pass on mat-
s on which the Board has not made findings; the Court
to be denied the aid and benefit of investigation, find-
s, and petition by the Board. Any such procedure would
contrary to the administrative process and would sub-
t the intended procedures of the Act.

Likewise, the petition of the C I O is based on a selfish,
ound, and inherently dangerous point of view as to the
and the determinations which are made under it. The
ard's complaint and hearings upon notice, the Board's
lings and Order, the Board's enforcement proceedings
the decree entered at its request, in all of which the
O now asserts proprietary and pre-emptive rights, are
ts of a *legislative process*. They derive validity only
n a constitutional delegation of authority by the Con-
ss. A valid Order of the Board as to private industry,
y granted enforcement at the instance of the public
ncy, is essentially a public enactment, not special legis-
on for the private benefit of any particular organization
ersons.

Investigation by the Board should precede contempt proceedings

From the settled law and practice under like statutes, we note the essentials of the sound procedure where disobedience of an Order of an administrative agency is charged. In analogous situations arising under Section 5 of the Federal Trade Commission Act, the Courts have required first a consideration and determination by the Commission of questions raised as to non-compliance with its Orders and of the propriety of extension or modification of the enforcement provisions. This has been required where the Commission itself brought the contempt proceeding.

In *Federal Trade Commission* v. *Milling Company*, 288 U. S. 212, this Court referred back to the Commission the question whether its Order should be modified in a manner not previously considered and determined by the Commission, and did so on the ground that "This is a matter which the Commission has not considered but which, as the body having primary jurisdiction, it should, in the first instance, consider and determine."

In *Federal Trade Commission* v. *Baltimore Paint & Color Works, Inc.*, 41 Fed. (2d) 474, the Circuit Court, following the ruling in *Federal Trade Commission* v. *Balme*, 23 Fed. (2d) 615, referred the questions of the violation of the Order, the enforcement of which was asked in the petition, to the Federal Trade Commission to report its conclusions to the Court. This was done on the ground that (page 476):

> "This Court has no machinery for investigating or ascertaining the fact as to the compliance or noncompliance with an Order of the Commission. The Commission has such machinery and is the proper body to pass upon that question."

The facts here seem to us to make even a stronger case for the Court's refusal to consider and determine in first instance the questions of disobedience and of supplementing and extending the Order and decree. Here a private person, not the Board, takes the matter to Court in first instance,

and does this, so far as its own showing goes, without even asking the Board itself to take steps to prevent and redress any of the alleged acts of disobedience to the Board's Order. In the Federal Trade Commission cases, the Commission had already considered and determined the disputed facts and the measures of enforcement to be taken. Here, as we have made clear at pages 3, 9 and 10, *ante*, the Amalgamated seeks supplemental and new extensions of enforcement, based on subsequently arising facts. The Court below could not have decided such issues of compliance or disobedience on affidavits.[1] Here, as in the Federal Trade Commission cases, the administrative agency has the machinery for investigating and deciding the factual issue, while the Circuit Court has no such machinery. Submission to the Court for its determination in first instance as to new and supplemental measures of enforcement would deprive the Court of the benefit of the findings and judgment of the Board.

Statutory requirements as well as the practice followed by the Courts in similar situations lead us to the conclusion that the Act and the Board can best fulfill their function of safeguarding the public against practices deemed unfair under the Act if it is required that all charges of non-compliance or disobedience of the Board's Order shall emanate from the Board, or shall be investigated and passed on in first instance by the Board, as the body having primary jurisdiction and the necessary administrative organization. To develop a precedent for a different course would frustrate the legislative policy which led the Congress to confer upon the Board exclusive powers of enforcement. The Board would cease to be the single administrative authority which the Congress intended to set out in the field of labor relations, and confusion rather than harmonious enforcement would result from the consequent dispersion of authority.

---

[1] As Judge Amidon observed in *Great Northern Ry Co. v. Brosseau*, 286 Fed. 414, 416, with respect to use of affidavits in litigation involving labor disputes: "Experience * * * has caused me to be so incredulous of affidavits that I have required in all important matters the presence of the chief witnesses upon each side at the hearing."

Punishment for civil contempt of judicial process should be used sparingly and with great caution and deliberation (*Fox* v. *Capital Company*, 96 Fed. (2d) 684). Where, as here, the paramount public interest is to be protected and vindicated, the initiative in all enforcement should consistently be that of the public agency, not of a contending labor organization.

The Board's "response" to the C I O motion

Petitioner attempts to gain some support for its position here, by citing the "response" filed by the Board's counsel (R. 62-63), wherein he states that the Board deems that sufficient facts had been presented to warrant investigation, and offered its cooperation in this respect (Brief, pages 39-40).

The Board's counsel does not state whether the Amalgamated had submitted all or some of the same facts to the Board, and whether the Board had failed or refused to take action thereon. He does not state that the Board has found, or is of the opinion, that the unfair practices complained of come within the purview of its Order[1], or that it approves of the affirmative relief demanded by the petitioner, or that it has decided that the relief demanded or the prosecution of civil contempt proceedings at this time would "effectuate the policies of this Act," all of which are questions which subdivisions (a) and (c) of Section 10 and the express Congressional declarations[2], as well as the "primary jurisdiction" concept, place originally within the Board's exclusive jurisdiction.

The Amalgamated could not acquire standing by this "response"; the Board could not delegate to the Amalgamated its own power and authority under the Act. The Board was not made a party to the contempt proceeding

[1] The determination of what is an "unfair labor practice" seems to us to require knowledge as specialized as that involved in determining what is a reasonable rate.

[2] See pages 21-23, *ante*, and 42-43, *post*.

by the Amalgamated, and the Board did not ask leave to intervene as a party to the proceeding, after notice was served on it, so that it could prosecute in its own name, although the practice of the Board has been to initiate and prosecute civil contempt proceedings in its own name.[1]

All that the Board mildly stated in aid of the C I O was to the effect that matters had been presented which seemed to it to warrant investigation. We respectfully submit that the orderly course requires such an investigation by the Board and should be made before rather than *after* a contempt proceeding has been commenced, so that the Board could determine for itself whether the proceeding should be brought on at all. This would be in appropriate accord with the procedure regularly followed by it as to contempt proceedings[1] as well as complaints by labor organizations.[2]

Statistics published as to the work of the Board indicate that many of the complaints by labor organizations as to violations of the Act were found upon investigation to

---

[1] See footnote, page 13.

[2] In an address at Duke University on December 3, 1938 (3 L. R. R. M. 1044), Mr. Charles Fahy, General Counsel for the Board, outlined the course followed:

> "The Regional Director on receipt of the charge dockets it. He may investigate the matter personally or he may assign it to a field examiner. The stories of the Union and the employees are obtained. The story of the employer is obtained. A complete investigation is made, including the facts as to jurisdiction. This preliminary investigation both as to jurisdiction and the alleged unlawful practices, precedes any formal proceedings.
>
> "The Director has simply received a charge which he is investigating. During this stage 42 per cent of all our cases are dismissed or withdrawn either as a result of the Regional Office finding that the charge is so lacking in merit as not to warrant further proceedings, or because jurisdiction is believed to be lacking. The charge is either dismissed or, on the advice of the Regional Director to the charging party that he will proceed no further, is withdrawn. If, however, the investigation leads the Regional Director to believe that the charge is well founded, he seeks compliance."

be "so lacking in merit as not to warrant further proceedings". Although we do not know what the Board's experience has been with respect to complaints respecting violations of enforcement decrees obtained by the Board, undoubtedly it must have found upon investigation that many charges of disobedience of the Board's Orders were so lacking in merit as not to warrant further proceedings.

The contention that the Board is without power to make such a preliminary investigation is groundless. Under Section 5 of the Act, it may "prosecute any inquiry necessary to its functions." Also, the matters complained of in the petition (R. 9-12) come within the investigatory powers of the Board under Section 10 of the Act. As a party litigant the Board would also have authority to investigate the claims made in affidavits submitted by the Amalgamated, and thus determine whether the facts warrant contempt proceedings. That the Board exercises such power is made evident by the numerous civil contempt proceedings which the Board has already instituted.

POINT III

Amalgamated's filing of a charge with the Board and its subsequent brief and oral argument by permission of the Court in the enforcement proceedings begun by the Board do not give it standing to institute contempt proceedings.

Amalgamated also claims standing here because: (1) The complaint issued by the Board originated in a charge filed by a predecessor of the Amalgamated; and (2) Its predecessor "intervened" in the enforcement proceeding instituted by the Board under Section 10 (e).

The filing of a charge does not make the labor organization the complainant or prosecutor in such proceeding as the Board decides to initiate, does not give it initiative,

control or standing as of right at any subsequent stage, and does not constitute the labor organization the party by whom the Board's Order and its enforcement are "secured". The provisions of Section 10 of the Act follow closely those of Section 5 of the Federal Trade Commission Act (H. R. Rep. 972, *supra*); *Ford Motor Company* v. *Labor Board*, 305 U. S. 364, 373; *Labor Board* v. *National Motor Bearing Company*, 105 Fed. (2d) 652, 661; and with respect to the standing, under Section 5 of the latter Act, of a person or organization who brings charges of unfair practices to the attention of the Commission, this Court has said (*Federal Trade Commission* v. *Klesner*, 280 U. S. 19, 25):

> "* * * A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute before the Commission a complaint against the alleged wrongdoer. Nor may the Commission authorize him to do so. He may of course bring the matter to the Commission's attention and request it to file a complaint. But a denial of his request is final. And if the request is granted and a proceeding is instituted, he does not become a party to it or have any control over it."

The National Labor Relations Act provides merely that "whenever" a charge of unfair labor practices is filed with the Board, the Board "shall have power" to issue a complaint in its own name and start a proceeding at its own expense (Section 10 (b)). As we have shown in detail on pages 5 to 7, *ante*, the Amalgamated's predecessor was denied any part in the taking of testimony[1], the Board exercised control of the proceedings at every stage, and enforcement was decreed solely at the request of the Board. The Amalgamated relies also upon the permission granted by the Court to its counsel to be heard orally and file a brief as though this established its standing as a formal party. The application was not of right, and was addressed to the

[1] This refutes the contention (Petition for Certiorari, page 24) that the Board itself recognizes the right and standing of a person who files a "charge" to prosecute the "charge" before it.

favor of the Court (see pages 6 and 7, *ante*). Leave to file a brief and be heard orally was all the Court granted, and was also all it could have granted to the Amalgamated, in view of the limitations imposed by sub-divisions (a), (e) and (f) of Section 10 of the Act.[1]

POINT IV

The Amalgamated cannot claim standing to prosecute this contempt proceeding on the theory that it is now a "person aggrieved" within the meaning of Section 10 (f) of the Act

Petitioner contends also (Petition, pages 23-24; Brief, pages 25-26) that Section 10 (f) gives to a person who files with the Board a charge of unfair labor practices a standing later as a party, in the event the redress asked for by him has been denied by the Board. From this the conclusion is attempted that within the meaning of Section 10 (f) the Amalgamated has standing as a "person aggrieved" to press a charge of civil contempt independently of any action by the Board.

Such a contention is without merit. Section 10 (f) can be availed of only by a person or organization aggrieved *by an Order of the Board*, and then only for the sole purpose of petitioning that the Order be vacated or modified. Such is not the nature of a civil contempt proceeding. Such a proceeding is merely a continuance of the earlier review and enforcement proceeding (*Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 444-445; *National Labor Relations Board* v. *Hopwood Retinning Company*,

[1] The lack of standing of a labor organization as a party (where not aggrieved by the Board Order) seems implicit in the denial by this Court of the motion of the Maritime Union of America, upon whose charge the Board had issued a complaint alleging unfair labor practices (103 Fed. (2d) 157), for leave to intervene in *National Labor Relations Board* v. *Waterman Steamship Corporation*, 84 L. Ed. (Adv. Ops.) 132.

104 Fed. (2d) 302, 305). It was so treated and entitled by the Amalgamated (R. 1). Amalgamated has never claimed to be *"aggrieved"* by the Board's Order or the Court's decree. Its present purpose is to obtain an adjudication supplementing, extending and interpreting the Order and the decree. This was indicated by the Amalgamated in its motion (R. 13) and more particularly in the memorandum filed in support of its motion (Amalgamated brief in the Circuit Court, page 5). The relief which the Amalgamated asked of the Board was that it issue a complaint against the respondents. The Board issued a complaint, held hearings, and subsequently petitioned the Court for the enforcement of its Order. The record does not show a submission to the Board, or any denial by it, of any request by the Amalgamated that the Board prosecute a civil contempt proceeding. It is thus seen that Section 10 (f) has no relevancy to the point here at issue and could not give the Amalgamated standing to begin a civil contempt proceeding in its own behalf.

POINT V

The comprehensive and specific statutory plan for enforcement by the Board precludes the authority of anyone else to initiate proceedings and precludes the availability of other modes of enforcement

Amalgamated argues (Petition, pages 21-23; Brief, pages 22-23) that the absence of any statutory provisions authorizing or permitting it to institute contempt or enforcement proceedings is not fatal to its claimed standing; inasmuch as there *must be* a way for it to enforce its own "statutory rights" by its own action. Amalgamated argues that the Act was intended to make the Board only a Court of first instance, rather than an enforcement agency, and therefore that private persons need no statutory authority for making themselves the enforcement agency without action by the Board.

Where "statutory rights" are created and no provision for their enforcement by a public agency is made in the statute, equity jurisdiction may be invoked by private parties when it is essential to the protection of the rights asserted. Decisions such as those in *Texas & N. O. R. Company* v. *Brotherhood*, 281 U. S. 548, and *Virginia Railway Co.* v. *System Federation*, 300 U. S. 515, cited by the petitioner (Brief, page 34), illustrate the application of this principle. But a different rule applies, where, as here, the Congress has created and empowered a public agency to enforce the rights under the Act, and has also prescribed specific modes of enforcement. In that event a private person has no independent right to start its own proceedings to enforce, unless the statute expressly provides for and authorizes such action (*Lewis' Sutherland on Statutory Construction (2nd Ed.)*, Sections 491-493).

Analogies from other statutes

The Congress has dealt often with such a situation. The enactment of Section 16 of the Clayton Act in 1914 (Tit. 15 U. S. Code, Section 26) is in point. Private persons were thereby expressly authorized to bring suits to prevent and restrain violations of the Anti-Trust Act. Prior to its passage, this Court had ruled that the fourth section of the Sherman Anti-Trust Act of July 2, 1890 (c. 647, 26 Stat. 209), which directs the Attorney-General to institute proceedings to prevent and restrain violations under the Act, precluded a private person from maintaining suit for such purposes (*Paine Lumber Co.* v. *Neal*, 244 U. S. 459, 471; *Minnesota* v. *Northern Securities Co.*, 194 U. S. 48). In the case last cited this Court said, as to the effect of Section 4 on the right of private suit (page 71):

> "* * * It is a safe and conservative interpretation, in view as well of the broad and exclusive power of Congress over interstate and international commerce as of the fact that, so far as such commerce is con-

cerned, Congress has prescribed a specific mode for preventing restraints upon it, namely, suits in equity under the direction of the Attorney General. Of the present suit the Attorney General has no control, and is without any responsibility for the manner in which it is conducted, although, in its essential features, it is just such a suit as would be brought by his direction when proceeding under the fourth section of the Anti-Trust Act."

The Securities Act of 1933 (48 Stat. 77, 84, 86; 49 Stat. 1291; Tit. 15 U. S. Code) authorizes the Securities and Exchange Commission to invoke the aid of Federal District Courts to enjoin acts or practices in violation of the Act (Section 77 t (b)); and by Section 77 (l) it makes the seller of a security violating Section 77 (e) "liable to the person purchasing such security from him" and authorizes the purchaser to sue either at law or in equity, thereby expressly giving the purchaser a statutory action which departs from common law civil liability. See: *Shulman, Civil Liability and the Securities Act* (1933), 43 Yale L. J. 227.

Section 16 (12) of the Interstate Commerce Act (36 Stat. 1167, Tit. 49 U. S. Code) is another illustration. It is there provided that if any carrier fails "to obey any order of the Commission other than for the payment of money", the Interstate Commerce Commission "or any party injured thereby" may apply to the appropriate District Court for the enforcement of such Order. As far as an Order for the payment of money is concerned, subdivision 2 of Section 16 gives "the complainant, or any person for whose benefit such order was made" authority to bring an action, in the nature of a civil suit, to recover damages resulting from non-compliance with the Commission's Order.[1]

[1] The provisions of Section 828 of the Shipping Board Act (46 U. S. Code) are similar to the provisions of Section 16 (12) of the Interstate Commerce Act, while Section 829 of the Shipping Board Act is similar to subdivisions (2) and (4) of Section 16. The provisions of the Packers and Stockyards Act (Tit. 7 U. S. Code

(*Footnote continued on next page.*)

The decisive fact here is that the National Labor Relations Act is not silent either as to the method of enforcement or as to the authorized movant for enforcement. At every step from investigation to enforcement decrees, the initiative is vested explicitly and only in the Board (see pages 18 to 23, *ante*). Findings and petition by the Board are conditions precedent. Those who assert rights by virtue of the Act must abide its procedures, which are often in derogation of remedies available at common law for rights which do not arise from such a statute.[1] The naming of those who may ask for enforcement of a remedial statute and the providing of specific remedies which they may use exclude enforcement by other persons or procedures.

Blankenship v. *Kurfman*, 96 Fed. (2nd) 450, 454;
Paine Lumber Company v. *Neal*, 244 U. S. 459;
Minnesota v. *Northern Securities Company*, 194 U. S. 48.

Intent of Congress as to contempt proceedings by the Board

In enacting the Act, the Congress clearly indicated its intention that contempt proceedings for violations of the Board's Orders should be instituted by the Board. H. R. Conference Report No. 1371 (74th Congress, 1st Sess.), as to the Wagner Act, said (page 5):

"* * * If such practice [unfair acts prohibited by an Order granted enforcement] is resumed, there will be immediately available to the Board an existing

---

Sections 210 (f), 216; 42 Stat. 165, 167) are patterned after similar provisions of the Interstate Commerce Act. Thus, Section 216, which deals with enforcement of Orders other than for the payment of money, follows the language of Section 16 (12) of the Interstate Commerce Act, while the enforcement of Orders for the payment of money under the Stockyards Act (Section 210 (f)) follows Section 16 (2) of the Interstate Commerce Act.

[1] See *National Labor Relations Board* v. *Colten*, quoted on page 29, *ante*.

Court decree to serve as a basis for contempt proceedings."

As we read the decision of January 2, 1940, in *American Federation of Labor* v. *National Labor Relations Board*, this Court has held that it will not, at the instance of a labor organization claiming that "peculiar hardships" will otherwise be inflicted on it, read into the Act provisions and judicial remedies which are not there in express terms, but will be guided strongly by the legislative intent as shown by Committee hearings and Reports in the Congress. These rulings seem decisive against the Amalgamated's claim of standing for itself without express statutory sanction.

POINT VI

The Board's Order and the enforcement decree granted at the instance of the Board do not create private rights and remedies in derogation of the statutory plan of enforcement.

The enforcement decree which the Court entered at the request of the Board was in essence an affirmance of the Board's Order as against the questions of legality raised by "aggrieved" parties. The Order made more definite the "generic statutory prohibitions" of Section 8. In particular, the affirmance of the Board's action could not relate to or provide for unanticipated matters not litigated but subsequently arising.

Neither the Board nor the Court below could create a private right or remedy under the Act, which Congress did not grant by the Act itself. The Board's authority could not go beyond its provisions. The same limitation to appellate and revisory jurisdiction applies to the Circuit

Court of Appeals in proceedings to review or enforce the Board's Order.

Federal Trade Commission v. *Eastman Company*, 274 U. S. 619.

That case dealt with the scope of the Commission's and the Court's authority under Section 5 of the Federal Trade Commission Act. The Court held that the Commission's authority under Section 5 did not go beyond the administrative functions delegated to it by the Act. As to the power of the Circuit Court of Appeals on a petition to review, the Court said (pages 623-624) that such power

> "is limited to the question whether or not it [the Commission] has properly exercised the administrative authority given it by the Act, and may not sustain or award relief beyond the authority of the Commission; such review being appellant and revisory merely, and not an exercise of original jurisdiction by the Court itself."

Read in the light of the limited authority of the Board in making the Order and of the Circuit Court of Appeals in decreeing its enforcement, it is obvious that neither the Order nor the decree of enforcement could grant, or was intended to grant, to the Amalgamated or any other labor organization any rights or remedies not granted by the Act itself, which, as shown fully on pages 13 to 29, *ante*, looks "only to public ends". Provisions not in the Act in express terms will not be read into the Act (*American Federation of Labor* v. *National Labor Relations Board*, U. S. ; decided January 2, 1940). To read into the provisions of the Order and the decree private rights and remedies not created by the Act would contravene the Act itself. *Rothschild & Co.* v. *Marshall*, 44 Fed. (2d) 546, 549.

The "cease and desist" provisions of the Board's Order specified and prohibited certain activities; e. g., encouraging membership in the I B E W and discouraging membership in "the Amalgamated or any other labor organization," etc.

Such prohibitions are declarative of the unfair labor practices proscribed by the Act, which are essentially "matters of public concern, by their nature and consequences, present or potential" (Report of the House Committee on Labor—No. 972; 74th Congress).[1] Being matters of public concern, a violation of the restraining Order and decree would not give the Amalgamated any private interest as distinguished from the paramount concern of the general public. Absent a recognized private and personal interest differing from that of the general public, there is no legal right or standing of a private party to guard the public against illegal acts; and the Court should not entertain a private proceeding to punish a party for violating an Order in which the public is primarily concerned (*Tyler* v. *Judges of Court of Registration*, 179 U. S. 405, 406; *Secor* v. *Singleton*, 35 Fed. 376). In the case last cited, the Court stated the guiding principle (page 378):

> "• • • In cases where an injunction has been granted to enforce or maintain a merely private right, a proceeding instituted to punish a party for violating the Order is very generally regarded as a proceeding to redress a private injury in which the public have no concern, and for that reason the prosecutor or person filing the information must have an interest in the proceeding differing from that of the general public; otherwise the Courts will not entertain the information. *Hawley* v. *Bennett*, 4 Paige, 163; Rap. Contempt, § 127; 2 High, Inj. (2d Ed.) § 1449. • • •"

Amalgamated does not here show monetary damages or assert any specific injury to itself or its members beyond the loss of private advantages which would be gained as an incident to the enforcement of the paramount public rights (*Sprunt and Son* v. *United States, supra*). To show his standing as a litigant, a complainant must show injury to him, not to others. *McCabe* v. *Atchison, Topeka & Santa Fe Railway Co.*, 235 U. S. 151, 162. He "must possess some-

[1] See, also, foot-note 1 on page 29.

thing more than a common concern for obedience to law." *Western Pacific California Railroad Company* v. *Southern Pacific Company*, 284 U. S. 47, 51. Absent any damages which can be admeasured, there could be no basis for maintaining a civil contempt (*Judelshon* v. *Black*, 64 Fed. (2d) 116, 117):

> "* * * The theory of recovery in civil contempt proceedings is to compel the payment of damages by way of a fine, and, since no damages were suffered, there should be no finding of contempt."

Amalgamated cannot constitute itself the guardian of the public. The Congress vested that function in the Board, which alone may exercise it. As was pointed out by Mr. Justice Brandeis, in his concurring opinion in *Ashwander* v. *Valley Authority*, 297 U. S. 288, 343:

> "* * * The function of guarding the public against acts deemed illegal rests with the public officials."

An unfounded argument from "practicality"

Amalgamated's brief (pages 43-44) as well as its petition (pages 7-9) argue that the Act must be construed so as to authorize a labor organization to bring its own proceeding to punish violations of a Board Order as a contempt of Court. The argument is that otherwise a burden of surveillance over compliance with its Orders and the decrees of enforcement will be placed on the Board, and there will be danger of a breakdown in enforcement. The following observation as to private prosecutions seems pertinent[1]:

> "The admission of private prosecution may be looked upon as an attempt to relieve the Commission of part of its burden, but the result must often be the opposite, forcing the Commission to take up a problem which on its own initiative it might prefer to leave alone."

---

[1] *Freund, Administrative Powers Over Persons and Property* (1928), page 167.

We are not here concerned with the wisdom of the legislative intent[1] and policy that contempt proceedings as to violations of the Board's Orders shall be brought by the Board. The Courts have no authority to overrule that intent and vary the Act by according to labor organizations rights of resort to Court which are not granted and provided for in the Act.

American Federation of Labor v. *National Labor Relations Board*, —— U. S. ——; decided January 2, 1940.

Had the Board exhausted its authority by filing the Transcript?

Amalgamated argues that the Board had spent all its powers of enforcement when it filed the Transcript of Record with the Circuit Court in the enforcement proceedings. Amalgamated cites the decision of this Court in *Ford Motor Company* v. *Labor Board*, 305 U. S. 364, as holding that by such filing "the Board lost all jurisdiction of the matter, and can act thereafter *only in pursuance to an Order or direction from the Circuit Court of Appeals*" (Brief, page 42).

Such an argument by the Amalgamated proves too much. If it is well taken, then each of the Circuit Courts of Appeals which has entertained civil contempt proceedings instituted by the Board and has adjudicated employers to be in civil contempt of Court upon the Board's motion[2] has been grossly in error and their adjudications are a nullity. Such a view of the *Ford Motor* decision would mean that if private parties failed to initiate civil contempt proceedings for violations of a Board Order, the Board itself would be powerless to act, for it would be without authority or standing to invoke the Court's aid to punish the violators of its Orders, although the Court had decreed their enforcement at the instance of the Board. It would place in private and biased

[1] See pages 42 and 43.

[2] See footnote on page 13, *ante*.

hands the sole responsibility for safeguarding the public against interruption of commerce caused by civil disobedience of the Board's Order.

No such serious consequences seem to us to flow from the decision of this Court in the *Ford Motor* case. As we read it, the decision was that the Board has no absolute right to withdraw its petition for enforcement, for the purpose of modifying or setting aside its findings and Order under Section 10 (d) of the Act, and thereby to divest the Court of its jurisdiction, which the filing of the transcript by the Board had conferred upon it. The situation here is different. A proceeding by the Board to punish for a civil contempt would not involve the modification or setting aside of its findings and Order or the divesting of the Circuit Court of its jurisdiction over its decree. The Congress and the Act clearly contemplated, as we have shown, that the enforcement of the Board's Order, whether by Section 10(c) or by contempt proceedings, shall at all times remain in the keeping of the Board. The Board has itself taken the position that the Act does not permit it "to make labor organizations parties to its proceedings" (Brief in opposition to the petition of the I B E W for certiorari in Docket No. 19—October Term, 1938). The power to prevent and redress unfair labor practices is expressly vested *exclusively* in the Board (Section 10 (a)). By making the Board's power exclusive, the Act impliedly precludes anyone else from exercising it. This primary and exclusive jurisdiction to prevent and redress unfair labor practices affecting commerce must necessarily extend to the power to initiate proceedings for civil contempt. Such a proceeding is essentially a continuance of the enforcement proceeding initiated by the Board. As was said by this Court in *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 444-445:

> "Proceedings for civil contempt are between the original parties and are instituted and tried as part of the main cause."

nishment for civil contempt is an enforcement procedure d was so intended by the Amalgamated (R. 13). It is erely a "continuance of the earlier action and is a step the enforcement of our previous judgment" (*Labor oard* v. *Hopwood Retinning Co.*, 104 Fed. (2d) 302, 305).

In Conclusion

The above-stated considerations confirm abundantly the ent of the Congress to make the Board "the paramount ency for dealing with the unfair labor practices described the bill"[1] and to give the Board "exclusive jurisdiction prevent and redress unfair labor practices",[2] at the same ne stating that "No private right of action is contemted".[3] That any contempt proceedings as to violations Board Orders should be brought by the Board was made ar in the Conference Report[4] which led to the enactment the Act. The intent and purpose of conferring this exclue power on the Board were stated clearly to be[5]

> "to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American Law regarding collective bargaining".

These clear evidences of the legislative intent, coupled h the absence of statutory sanction for the bringing an enforcement proceeding or an ancillary contempt proding by a private labor organization, seem to us to be

---

[1] House Report No. 972; 74th Congress, 1st Session, page 21; also, pages 21-22, *ante*.

[2] Senate Report No. 573; 74th Congress, 1st Session, page 15; also, page 22, *ante*.

[3] House Report No. 972, page 21; see, also, page 22, *ante*.

[4] House Conference Report No. 1371, page 5; see, also, page 42, *ante*.

[5] Senate Report No. 573, page 15; see, also, page 22, *ante*.

conclusive against the Amalgamated's standing as movant here.

American Federation of Labor v. *National Labor Relations Board*, U. S. ; decided January 2, 1940.

POINT VII

The decision and Order below were correct and plainly in accord with the wording and the declared intent of the Act and with the sound functioning of the procedures set up in the field of labor relations, and should be affirmed

Dated, January 3, 1940

Respectfully submitted

William L. Ransom
P. M. Berkson
Counsel for respondents

Whitman, Ransom, Coulson & Goetz
Solicitors for Respondents
No. 40 Wall Street
New York City

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935; c. 372, 49 Stat., 449, U. S. C., Sup. II, Title 29, Sec. 151, *et seq.*) are as follows:

Section 10(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise. • • •

(e) The Board shall have power to petition any Circuit Court of Appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the Circuit Courts of Appeals to which application may be made are in vacation, any District Court of the United States (including the Supreme Court of the District of Columbia), within any Circuit or District, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such Order and for appropriate temporary relief or restraining Order, and shall certify and file in the Court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such Order was entered and the findings and Order of the Board. Upon such filing, the Court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining Order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the Order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The

findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the Court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original Order. The jurisdiction of the Court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate Circuit Court of Appeals if application was made to the District Court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in Sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, Secs. 346 and 347).

(f) Any person aggrieved by a final Order of the Board granting or denying in whole or in part the relief sought may obtain a review of such Order in any Circuit Court of Appeals of the United States in the Circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such Court a written petition praying that the Order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the Court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the Order complained of was entered and the findings and Order of the Board. Upon such filing, the Court shall pro-

ceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining Order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the Order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

Board's Order as modified by this Court

The Order of the National Labor Relations Board dated November 10, 1937, as modified by the decree of enforcement entered January 21, 1939 (R. 5-7), in pursuance of the Mandate of this Court (305 U. S. 197, 238, 239), is as follows:

"Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

"1. Cease and desist from:

"a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or

tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

"b. Urging, persuading, warning, or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with discharge if they fail to join any such labor organization;

"c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

"d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

"e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

"f.[1] Giving effect to their contracts with the International Brotherhood of Electrical Workers;

---

[1] This clause 1 (f) of the Board's Order was eliminated by the Court below, in pursuance of the Mandate of this Court. The opinion in *Consolidated Edison Company* v. *National Labor Relations Board*, 305 U. S. 197, said, at page 238:

"We conclude that the Board was without authority to require the petitioning companies to desist from giving effect to the Brotherhood contracts, as provided in subdivision (f) of paragraph one of the Board's Order."

"g.[1] Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

"h. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

"a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Elmer, and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

"b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his dis-

---

[1] Concerning the meaning and effect of subdivision (g) of the Board's Order, this Court said (305 U. S. 197, at page 239):

"Subdivision (g) of that paragraph, requiring the companies to cease recognizing the Brotherhood 'as the exclusive representative of their employees' stands on a different footing. The contracts do not claim for the Brotherhood exclusive representation of the companies' employees but only representation of those who are its members, and the continued operation of the contracts is necessarily subject to the provision of the law by which representatives of the employees for the purpose of collective bargaining can be ascertained in case any question of 'representation' should arise. § 9. We construe subdivision (g) as having no more effect than to provide that there shall be no interference with an exclusive bargaining agency if one other than the Brotherhood should be established in accordance with the provisions of the Act. So construed, that subdivision merely applies existing law."

charge to the date of such offer of reinstatement, less the amount earned by him during such period;

"c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge, or in any manner discriminate against members of United Electrical and Radio Workers of America or any other labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist International Brotherhood of Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

"d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

"3. The complaint, in so far as it alleges that the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(2) of the Act, is hereby dismissed without prejudice."

SUPREME COURT OF THE UNITED STATES.

No. 342.—October Term, 1939.

Amalgamated Utility Workers, Affiliated with Utility Workers Organizing Committee, Congress of Industrial Organizations, Petitioner,
vs.
Consolidated Edison Company of New York, Inc., et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[February 26, 1940.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The National Labor Relations Board ordered the Consolidated Edison Company of New York and its affiliated companies to desist from certain labor practices found to be unfair and to take certain affirmative action. The Circuit Court of Appeals granted the Board's petition for enforcement of the order, and its decree, as modified, was affirmed by this Court. 305 U. S. 197. Petitioner, Amalgamated Utility Workers, brought the present proceeding before the Circuit Court of Appeals to have the Consolidated Edison Company and its affiliated companies adjudged in contempt for failure to comply with certain requirements of the decree.

The Board, in response to the motion, asserted its willingness to participate in an investigation to ascertain whether acts in violation of the decree had been committed and suggested that the court direct such investigation as might be deemed appropriate.

The Court of Appeals denied the application upon the ground that petitioner had "no standing to press a charge of civil contempt, if contempt has been committed". The court held that under the National Labor Relations Act "the Board is the proper party to apply to the court for an order of enforcement and to present to the court charges that the court's order has not been obeyed". 106 F. (2d) 991. In view of the importance of the question in relation to the proper administration of the National Labor Relations Act, we granted certiorari. October 16, 1939.

Petitioner contends that the National Labor Relations Act[1] "creates private rights"; that the Act recognises the rights of labor organizations; and that it gives the parties upon whom these rights are conferred status in the courts for their vindication. In support of its alleged standing, petitioner urges that under its former name (United Electrical and Radio Workers of America) it filed with the National Labor Relations Board charges against the respondent companies, and that it was upon these charges that the Board issued its complaint and held the hearing which resulted in the order in question. Also, that petitioner was permitted to intervene in the proceedings before the Circuit Court of Appeals where the companies had moved to set aside the Board's order and the Board had moved to enforce it; and that the petitioner had also been heard in this Court in the certiorari proceedings for review of the decree of enforcement.

Petitioner invokes the statement in Section 1 of the Act of "findings and policy", with respect to the effect of the denial by employers of the right of employees to organize and to bargain collectively, and in particular the provision of Section 7[2] that

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection".

Neither this provision, nor any other provision of the Act, can properly be said to have "created" the right of self-organization or of collective bargaining through representatives of the employees' own choosing. In *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33, 34, we observed that this right is a fundamental one; that employees "have as clear a right to organize and select their representatives for lawful purposes" as the employer has "to organize its business and select its own officers and agents"; that discrimination and coercion "to prevent the free exercise of the right of employees to self-organization and representation" was a proper subject for condemnation by competent legislative authority. We noted that "long ago" we had stated the reason for labor organiations.—that through united action employees might have "opportunity to deal on an equality with

[1] 49 Stat. 449, 29 U. S. C. 151, *et seq.*

[2] 29 U. S. C. 157.

their employer", referring to what we had said in *American Steel Foundries* v. *Tri-City Central Council*, 257 U. S. 184, 209. And in recognition of this right, we concluded that Congress could safeguard it in the interest of interstate commerce and seek to make appropriate collective action "an instrument of peace rather than of strife". To that end Congress enacted the National Labor Relations Act.

To attain its object Congress created a particular agency, the National Labor Relations Board, and established a special procedure. The aim, character and scope of that special procedure are determinative of the question now before us. Within the range of its constitutional power, Congress was entitled to determine what remedy it would provide, the way that remedy should be sought, the extent to which it should be afforded, and the means by which it should be made effective.

Congress declared that certain labor practices should be unfair, but it prescribed a particular method by which such practices should be ascertained and prevented. By the express terms of the Act, the Board was made the exclusive agency for that purpose. Section 10(a) provides:[3]

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise".

The Act then sets forth a definite and restricted course of procedure. A charge of an unfair labor practice may be presented to the Board, but the person or group making the charge does not become the actor in the proceeding. It is the Board, and the Board alone or its designated agent, which has power to issue its complaint against the person charged with the unfair labor practice. If complaint is issued, there must be a hearing before the Board or a member thereof or its agent. The person against whom the complaint is issued may answer and produce testimony. Other persons may be allowed to intervene and present testimony, but only in the discretion of the Board, or its member or agent conducting the hearing. Section 10(b).[4] The hearing is under the control of the Board.

[3] 29 U. S. C. 160(a).
[4] 29 U. S. C. 160(b).

The determination whether or not the person named in the complaint has engaged or is engaging in the unfair labor practice rests with the Board. If the Board is of the opinion that the unfair labor practice has been shown, the Board must state its findings of fact and issue its "cease and desist" order with such affirmative requirements as will effectuate the policy of the Act. Section 10(c).[5]

So far, it is apparent that Congress has entrusted to the Board exclusively the prosecution of the proceeding by its own complaint, the conduct of the hearing, the adjudication and the granting of appropriate relief. The Board as a public agency acting in the public interest, not any private person or group, not any employee or group of employees, is chosen as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce.

When the Board has made its order, the Board alone is authorized to take proceedings to enforce it. For that purpose the Board is empowered to petition the Circuit Court of Appeals for a decree of enforcement. The court is to proceed upon notice to those against whom the order runs and with appropriate hearing. If the court, upon application by either party, is satisfied that additional evidence should be taken, it may order the Board, its member or agent, to take it. The Board may then modify its findings of fact and make new findings. The jurisdiction conferred upon the court is exclusive and its decree is final save as it may be reviewed in the customary manner. Section 10(e).[6] Again, the Act gives no authority for any proceeding by a private person or group, or by any employee or group of employees, to secure enforcement of the Board's order. The vindication of the desired freedom of employees is thus confided by the Act, by reason of the recognized public interest, to the public agency the Act creates. Petitioner emphasizes the opportunity afforded to private persons by Section 10(f).[7] But that opportunity is given to a person aggrieved by a final order of the Board which has granted or denied in whole or in part the relief sought. That is, it is an opportunity afforded to *contest* a final order of the Board, not to *enforce* it.

[5] 29 U. S. C. 160(c).
[6] Section 160(e).
[7] 29 U. S. C. 160(f).

The procedure on such a contest before the Circuit Court of Appeals is assimilated to that provided in Section 10(e) when the Board seeks an enforcement of its order. But that assimilation does not change the nature of the proceeding under Section 10(f), which seeks not to require compliance with the Board's order but to overturn it.

What Congress said at the outset, that the power of the Board to prevent any unfair practice as defined in the Act is exclusive, is thus fully carried out at every stage of the proceeding. The text of the Act is so clear in this respect that there is no need to comment upon its legislative history. But this puts in a strong light the legislative intent. In the Senate, the Committee on Education and Labor in its report on the bill said:[8]

"Section 10(a) gives the National Labor Relations Board exclusive jurisdiction to prevent and redress unfair labor practices, and, taken in conjunction with section 14, establishes clearly that this Act is paramount over other laws that might touch upon similar subject matters. Thus it is intended to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining".

And the Committee on Labor of the House of Representatives in its report stated:[9]

"The Board is empowered, according to the procedure provided in section 10, to prevent any person from engaging in any unfair labor practice listed in section 8 'affecting commerce' as that term is defined in section 2(7). This power is vested exclusively in the Board and is not to be affected by any other means of adjustment or prevention. The Board is thus made the paramount agency for dealing with the unfair labor practices described in the bill".

After referring to the suitable adaptation of the Board's orders to the needs of particular cases, and especially to the power to reinstate employees with or without back pay, the Committee continued:

"No private right of action is contemplated. Essentially the unfair labor practices listed are matters of public concern, by their nature and consequences, present or potential; the proceeding is in the name of the Board, upon the Board's formal complaint. The

[8] Sen. Rep. No. 573, 74th Cong., 1st sess., p. 15.
[9] H. R. Rep. No. 972, 74th Cong., 1st sess., p. 21.

form of injunctive and affirmative order is necessary to effectuate the purpose of the bill to remove obstructions to interstate commerce which are by the law declared to be detrimental to the public weal".

In both Houses of Congress, the Committees were careful to say that the procedure provided by the bill was analogous to that set up by the Federal Trade Commission Act, section 5,[10] which was deemed to be "familiar to all students of administrative law". That procedure, which was found to be prescribed in the public interest as distinguished from provisions intended to afford remedies to private persons, was fully discussed by this Court in *Federal Trade Commission* v. *Klesner*, 280 U. S. 19, 25, where it was said:

"Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrongs. The formal complaint is brought in the Commission's name; the prosecution is wholly that of the Government; and it bears the entire expense of the prosecution. A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute before the Commission a complaint against the alleged wrongdoer. Nor may the Commission authorize him to do so. He may of course bring the matter to the Commission's attention and request it to file a complaint. But a denial of his request is final. And if the request is granted and a proceeding is instituted, he does not become a party to it or have any control over it".

That sort of procedure concerning unfair competition was contrasted with that provided by the Interstate Commerce Act in relation to unjust discrimination. We said that "in their bearing upon private rights" they are "wholly dissimilar". The Interstate Commerce Act imposes upon the carrier many duties and creates in the individual corresponding rights. For the violation of the private right it affords "a private administrative remedy". The interested person can file as of right a complaint before the Interstate Commerce Commission and the carrier is required to make answer. We said that the Federal Trade Commission Act "contains no such features". *Id.*, p. 26. The present Act, drawn in analogy to the Federal Trade Commission Act, contains no such features.

As Congress has in this instance created a public agency entrusted by the terms of its creation with the exclusive authority

[10] 38 Stat. 719, 15 U. S. C. 45.

for the enforcement of the provisions of the Act, decisions dealing with the legal obligations arising under the Railway Labor Act[11] cannot be regarded as apposite. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 569, 570; *Virginian Railway Company* v. *System Federation No. 40*, 300 U. S. 515, 543, 544.

We think that the provision of the National Labor Relations Act conferring exclusive power upon the Board to prevent any unfair labor practice, as defined,—a power not affected by any other means "of prevention that has been or may be established by agreement, code, law, or otherwise", necessarily embraces exclusive authority to institute proceedings for the violation of the court's decree directing enforcement. The decree in no way alters, but confirms, the position of the Board as the enforcing authority. It is the Board's order on behalf of the public that the court enforces. It is the Board's right to make that order that the court sustains. The Board seeks enforcement as a public agent, not to give effect to a "private administrative remedy". Both the order and the decree are aimed at the prevention of the unfair labor practice. If the decree of enforcement is disobeyed, the unfair labor practice is still not prevented. The Board still remains as the sole authority to secure that prevention. The appropriate procedure to that end is to ask the court to punish the violation of its decree as a contempt. As the court has no jurisdiction to enforce the order at the suit of any private person or group of persons, we think it is clear that the court cannot entertain a petition for violation of its decree of enforcement save as the Board presents it. As the Conference Report upon the bill stated,[12] in case the unfair labor practice is resumed, "there will be immediately available to the Board an existing court decree to serve as a basis for contempt proceedings".

The order of the Court of Appeals denying petitioner's motion is affirmed.

Affirmed.

Mr. Justice MURPHY took no part in the consideration and decision of this cause.

---

[11] 45 U. S. C. 151. See 50 Harvard Law Review 1089, 1090.

[12] Conference Report, Cong. Rec., 74th Cong., 1st sess., pt. 9, p. 10,299.